IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27077-7-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
JERAMIE RAY DAVIS,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Brown, J.—Jeramie Ray Davis appeals his convictions for first degree murder, second degree burglary, and first degree trafficking in stolen property. He contends his speedy trial rights were violated and sufficient evidence does not support his murder conviction. Pro se, Mr. Davis raises evidence concerns and claims ineffective assistance of counsel. Finding no error, we affirm.

FACTS

Around 2:00 A.M. on June 18, 2007, Mr. Davis called 911 to report he discovered John G. Allen, the owner of Best Buy Bookstore (an adult-material bookstore), on the store's floor. When Officer Brian Cestnik responded, he found Mr.

Allen unconscious on the floor and a baseball bat under his knees. A large puddle of blood was visible behind Mr. Allen's head. Mr. Allen later died at a hospital due to blunt force trauma to the head. The store's cash register was missing and so was Mr. Allen's truck. The truck containing the cash register without the cash drawer was located nearby.

Mr. Davis reported that he found Mr. Allen on the floor earlier that evening, but he thought he passed out so he left. Mr. Davis later returned to the bookstore at the encouragement of his sister and then called police.

Elizabeth Troudt reported she was with Mr. Davis on the night of June 17; he had cash and checks with him; and he bragged that he "hit a lick," meaning he took someone's money. Report of Proceedings (RP) (Feb. 6, 2008) at 178. Mr. Davis asked Ms. Troudt not to touch the checks because he did not want her fingerprints on them and stated he would be burning the checks because they contained his fingerprints. Mr. Davis inquired whether Ms. Troudt knew where to get rid of a trunk full of pornography.

Mr. Davis' friend, Nichole Marriott, testified Mr. Davis told her he "hit a lick." RP (Feb. 6, 2008) at 199. Mr. Davis then took Ms. Marriott to the bookstore. He showed her Mr. Allen on the floor, but claimed he did not do it. Ms. Marriott and Mr. Davis then traded pornographic material from the store for methamphetamine.

On June 28, 2007, the State charged Mr. Davis with first degree felony murder

predicated on robbery. Mr. Davis' arraignment was set for July 11, 2007. Mr. Davis' initial trial date was set for September 4, 2007, but was rescheduled several times without his objection. A final continuance was granted to the State over Mr. Davis' objection in November, with a trial date set for February 4, 2008 to obtain DNA (deoxyribonucleic acid) evidence testing. The court found the continuance was justified. The State later amended the information to include second degree burglary and first degree trafficking in stolen property.

Trial began February 4, 2008. A forensic specialist testified that Mr. Davis' fingerprints were not found at the crime scene. Detective John Miller testified he recovered a pair of gloves from the trunk of Mr. Davis' vehicle. The gloves did not show evidence of blood contamination. The gloves were admitted without objection.

Following the State's case, Mr. Davis unsuccessfully requested dismissal of the murder and burglary charges. The defense then rested. The jury found Mr. Davis guilty as charged. Mr. Davis appealed.

ANALYSIS

A. Speedy Trial

The issue is whether Mr. Davis' right to a speedy trial under CrR 3.3 and the United States Constitution was violated.

Mr. Davis' initial trial date was September 4, 2007, within speedy trial limits, but was later rescheduled at least twice without objection. In November 2007, the State

asked for another continuance to acquire DNA results. Mr. Davis unsuccessfully objected. The court found the continuance was justified and not prejudicial to Mr. Davis. Trial started on February 4, 2008.

CrR 3.3 generally requires the State to bring an in-custody defendant to trial within 60 days of arraignment; if not, the trial court will dismiss the case with prejudice. CrR 3.3(b)(1)(i), (h). There are, however, several exceptions to this rule. Under CrR 3.3(e)(3), continuances are excluded from computing time for trial. CrR 3.3(f)(2) provides that "the court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense." The trial court's decision to grant a continuance will not be disturbed unless the court abused its discretion. *State v. Williams,* 104 Wn. App. 516, 520-21, 17 P.3d 648 (2001). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker,* 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

Mr. Davis agreed to two continuances that extended the start of trial beyond his initial trial date. The final continuance was necessary to acquire DNA results. This was unavoidable and potentially exculpatory. Thus, Mr. Davis cannot establish prejudice. Due to the justified continuances, the time between the original trial date of September 4 and the actual trial date of February 4 do not count toward the 60-day time for trial period. Accordingly, Mr. Davis does not show prejudice and fails to show

that his CrR 3.3 speedy trial rights were violated.

Turning to his constitutional argument, the Sixth Amendment of the United States Constitution guarantees criminal defendants the right to a speedy trial. But the constitution does not specify what "speedy" means in terms of days, months, or years. A reasonable time is the focus when reviewing a constitutional speedy trial claim. *State v. Whelchel*, 97 Wn. App. 813, 824, 988 P.2d 20 (1999). Courts consider four factors in determining whether a delay in bringing a defendant to trial impairs the constitutional right to the prompt adjudication of criminal charges: "the '[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.'" *In re Pers. Restraint of Benn,* 134 Wn.2d 868, 920, 952 P.2d 116 (1998) (quoting *Barker v. Wingo,* 407 U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)). Challenges alleging the denial of a speedy trial are reviewed de novo on appeal. *State v. Kenyon,* 143 Wn. App. 304, 312, 177 P.3d 196 (2008).

By its own terms, "[i]f a trial is timely under the language of [CrR 3.3], . . . the pending charge shall not be dismissed unless the defendant's constitutional right to a speedy trial was violated." CrR 3.3(a)(4). Mr. Davis' constitutional claims fail. Mr. Davis' trial was timely held pursuant to CrR 3.3 as discussed above, the delay was not lengthy. The evidentiary purpose for the delay was valid. And, while Mr. Davis did object to the continuance, he fails to show prejudice. While Mr. Davis' trial commenced almost 7 months after he was arrested, there was only 71 days between the agreed

upon trial date and the actual trial date. This time frame is not unreasonable. *See Benn,* 134 Wn.2d at 920 (defendant charged in May 1988 and brought to trial in March 1990).

B. Evidence Sufficiency

The next issue is whether sufficient evidence exists to support Mr. Davis' first degree murder conviction.

The standard of review for an evidence sufficiency challenge in a criminal case is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Green,* 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). Direct evidence and circumstantial evidence are equally reliable. *State v. Delmarter,* 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

For a person to be found guilty of felony murder, the State must prove that he or she committed or attempted to commit the named predicate felony "and in the course of or in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants." RCW 9A.32.030(1)(c). Mr. Davis contends no proof shows he caused Mr. Allen's death.

Mr. Davis admitted being at the crime scene. He bragged to at least two individuals that he "hit a lick." He brought both Ms. Marriott and his sister to the crime scene. Mr. Davis warned Ms. Troudt about the importance of not leaving fingerprints. Gloves were found in the trunk of his car. Mr. Davis admitted several hours passed

before he called 911, giving him ample time to stage the crime scene and alter evidence. The jury is bestowed with "'the ultimate power to weigh the evidence and determine the facts.'" *State v. Montgomery,* 163 Wn.2d 577, 590, 183 P.3d 267 (2008) (quoting Const. art. I, § 21; *James v. Robeck,* 79 Wn.2d 864, 869, 490 P.2d 878 (1971)). Viewing the evidence in the light most favorable to the State and recognizing circumstantial evidence is as reliable as direct evidence, sufficient evidence exists to support Mr. Davis' conviction.

C. Additional Grounds

In his statement of additional grounds for review, Mr. Davis contends the trial court erred by admitting as evidence gloves found in his car's trunk and his defense counsel was ineffective for not objecting to the gloves' admittance.

A party may assign error on appeal only on the specific ground of the evidentiary objection made at trial. *State v. Guloy,* 104 Wn.2d 412, 422, 705 P.2d 1182 (1985). This rule gives the trial court the opportunity to prevent or cure the error. *State v. Madison,* 53 Wn. App. 754, 762-63, 770 P.2d 662 (1989). Where a party fails to object on proper grounds to the admission of evidence, the evidentiary issue is not properly before this court. *State v. Stevens,* 58 Wn. App. 478, 494, 794 P.2d 38 (1990). Mr. Davis did not object below to the gloves being admitted; therefore, this issue is waived.

Even so, the decision to admit evidence is generally within the sound discretion

of the trial court, and a trial court's evidentiary ruling is reversed only for abuse of discretion. *State v. Atsbeha,* 142 Wn.2d 904, 913-14, 16 P.3d 626 (2001). Under ER 401, relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." "The threshold to admit relevant evidence is very low [and] [e]ven minimally relevant evidence is admissible." *State v. Darden,* 145 Wn.2d 612, 621, 41 P.3d 1189 (2002).

Here, the gloves offer an explanation why fingerprints were not located at the crime scene or on the murder weapon. This evidence is of consequence to the determination of the action. Thus, the trial court did not err in allowing this evidence. Because the evidence was admissible, Mr. Davis cannot establish ineffective assistance of counsel, which requires deficient performance and prejudice. *Strickland v. Washington,* 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

We affirm.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Brown, J.

WE CONCUR:

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Kulik, A.C.J.

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Sweeney, J.